

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 302 of the)
Telecommunications Act of 1996)

CS Docket No. 96-46

Open Video Systems)
)
)
)

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In the Matter of)
)
Telephone Company-Cable)
(Terminated))
Television Cross-Ownership Rules,)
Sections 63.54-63.58)

CC Docket No. 87-266

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's Report and Order and Notice of Proposed Rulemaking in the above-referenced proceeding,¹ AT&T Corp. ("AT&T") respectfully files these Reply Comments. AT&T limits these Reply Comments to the issue it addressed in the comment phase of this proceeding -- whether open video system operators should be permitted to offer bundled packages of local and long-distance telephone service, video programming delivery, and data transmission over integrated networks.²

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¹ Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems, Report and Order and Notice of Proposed Rulemaking, CS Docket No. 96-46, released March 11, 1996 ("NPRM").

² NPRM at para. 66. Generally, the NPRM seeks comment on how the Commission should implement the requirements of the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat. 56,

As expected, the local exchange carriers ("LECs") (Joint Parties³ at 30 and NYNEX Corporation ("NYNEX") at 28-29) recommend that the Commission not adopt any rules restricting the bundling of telephone services, cable services and data transmission.⁴ These commenters argue that a prohibition against bundling will deny them the "flexibility to offer their services in the manner they conclude will best secure customers."⁵ The cable operators, by contrast, contend that they will be put at a competitive disadvantage unless telephone companies are prohibited both from bundling and jointly marketing their telephony services with cable services.⁶

(footnote continued from previous page)

adopted February 8, 1996) with respect to the provision of video programming by means of an "open video system" that will promote competition and increase customer choice.

³ The Joint Parties are Bell Atlantic Telephone Companies and Bell Atlantic Video Services Company; BellSouth Corporation and BellSouth Telecommunications, Inc.; GTE Service Corporation and GTE Media Ventures, Inc.; Lincoln Telephone and Telegraph Company; Pacific Bell; SBC Communications Inc.; and Southwestern Bell Telephone Company.

⁴ As used here, "bundling" means the offering of multiple products and/or services for a single price. "Bundled" products and/or services are either not available separately, or can be obtained separately only at an aggregate price that differs from the price for the bundled offer. See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 F.C.C.2d 384, 442 (1980) ("Final Decision").

⁵ See, e.g., NYNEX, p. 28.

⁶ Continental Cablevision, Inc. ("Continental"), p. 15 ("the FCC [should] . . . not . . . allow any joint marketing by [telephone companies and their open video systems]"); Cox Communications, Inc. ("Cox"), p. 9 and Comcast Cable Communications, Inc., Adelphia Communications Corporation and

(footnote continued on following page)

AT&T demonstrated in its comments (at 3-4) that bundling of competitive and non-competitive services can inhibit competition, by allowing the non-competitive service provider to create bundled offers that cannot be matched by the individual offerings of the providers of the competitive products and services. The Commission itself expressed this concern, warning of the incentive of monopoly providers "to use bundling as an anti-competitive marketing strategy."⁷

This concern is also reflected in the comments of cable operators, who fear "that a telephone company could bundle its local exchange and [open video system] offering while effectively preventing cable operators . . . from offering a competing package by dragging its feet with regard to interconnection."⁸ In the absence of competition, the risk of such conduct far outweighs any benefit of "allow[ing] the marketplace to operate, at least until there is clear evidence of abuse or market failure."⁹

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InterMedia Partners, L.P. ("Comcast"), p. 9 (LECs should not be permitted to jointly market open video systems with local exchange service until the LECs are certified to be in compliance with Sections 251 and 252 of the Telecommunications Act of 1996); and National Cable Television Association, Inc. ("NCTA"), pp. 24-25 ("the Commission should institute an in-bound telemarketing process that levels the competitive playing field").

⁷ Final Decision, 77 F.C.C.2d at 443 n. 52 (1980).

⁸ Comcast at 9; see also Cox, p. 9.

⁹ NYNEX, pp. 29-30. The Joint Parties argue (p. 30) that the Commission should let the market determine the manner of service bundling options

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On the other hand, to the extent that the cable companies recommend that the LECs not be permitted even to jointly market their non-competitive telephone service with video services, this recommendation may go beyond what is appropriate to protect the public from anticompetitive conduct. Such joint marketing may be appropriate so long as the Commission requires that the components of the offer be available from the provider on an individual basis (that is, not only as a single-price bundled offer), and the costs of such joint marketing effort be allocated in accordance with approved joint cost allocation rules. When such safeguards are established, joint marketing allows providers to offer the comprehensive solutions desired by customers, while achieving marketing and cost efficiencies.¹⁰

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offered to customers, because "[c]ompetitive markets require regulatory forbearance." Until the Commission finds that the local telephone market is competitive, the Commission should not permit the bundling of these non-competitive services.

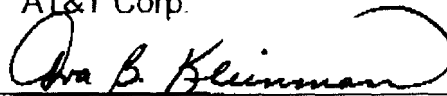
¹⁰ Amendment of Section of 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 104 F.C.C.2d 958, 1012 (1986).

WHEREFORE, for the reasons stated above, AT&T recommends that the Commission prohibit the bundling by open video system operators of non-competitive services with their competitive offerings, but allow for the joint marketing of competitive and non-competitive services, under approved cost allocation rules.

Respectfully submitted,

AT&T Corp.

By



Mark C. Rosenblum

Ava B. Kleinman

Seth S. Gross

Its Attorneys

Room 3245F3

295 North Maple Avenue

Basking Ridge, New Jersey 07920

(908) 221-8312

April 11, 1996

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 11th day of April, 1996, a copy of the foregoing "Reply Comments of AT&T Corp.", was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.


Rena Martens

SERVICE LIST
CS 96-46 and CC 87-266

Joseph P. Markoski
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
Attorneys for Electronic
Industries Association,
Consumer Electronics
Manufacturers Association, and
Consumer Electronics Retailers
Coalition

Gary Shapiro, President
Consumer Electronics
Manufacturers Association
2500 Wilson Boulevard
Arlington, VA 22201

Richard L. Sharp
W. Stephen Cannon
Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, VA 23233

John V. Roach
Ronald L. Parrish
Tandy Corporation
1800 One Tandy Center
Fort Worth, TX 76102

Michael S. Schooler
Steven F. Morris
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Attorneys for Comcast Cable
Communications, Inc., Adelphia
Communications Corporation,
Intermedia Partners, L.P.

Peter H. Feinberg
Laura H. Phillips
Steven F. Morris
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Attorneys for Cox
Communications, Inc.

Theodore D. Frank
Marilyn D. Sonn
Arent, Fox, Kintner, Plotkin &
Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for NYNEX Corporation

Donald C. Rowe, Esq.
Robert Lewis, Esq.
NYNEX Corporation
1111 Westchester Avenue
White Plains, NY 10604

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for Continental
Cablevision, Inc.

Robert J. Sachs
Margaret A. Sofio
Continental Cablevision, Inc.
Lewis Wharf, Pilot House
Boston, MA 02110

Brenda L. Fox
Continental Cablevision, Inc.
1320 19th St., Suite 201
Washington, D.C. 20036

Leslie A. Vial
Bell Atlantic Telephone
Companies and Bell Atlantic
Video Services Company
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Herschel L. Abbott, Jr.
Michael A. Tanner
Bellsouth Corporation and
Bellsouth Telecommunications,
Inc.
Suite 4300
675 West Peachtree St., N.E.
Atlanta, GA 30375

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20035

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
Attorneys for Lincoln Telephone
& Telegraph Company

Lucille M. Mates
Christopher L. Rasmussen
Sarah Rubenstein
Pacific Bell
140 New Montgomery Street
Room 1522A
San Francisco, CA 94105

Margaret E. Garber
Pacific Bell
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications, Inc. and
Southwestern Bell Telephone
Company
175 E. Houston
Room 1254
San Antonio, TX 78205

Mary W. Marks
SBC Communications, Inc. and
Southwestern Bell Telephone
Company
One Bell Center
Room 3558
St. Louis, MO 63101

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Counsel for the National Cable
Television Association, Inc.

Mark W. Johnson
CBS Inc.
1634 I Street, N.W.
Suite 1000
Washington, D.C. 20006

Stephen A. Hildebrandt
CBS Inc.
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Rick Maultra
City of Indianapolis
200 East Washington Street
City-County Building
Room G-19
Indianapolis, IN 46204

Thomas P. Nicholas, President
Greater Metro Cable Consortium
14949 East Alameda Drive
Aurora, CO 80012

Celeste M. Fasone
State of New Jersey
Office of Cable Television
2 Gateway Center, 8th Floor
Newark, NJ 07102

Walter S. de la Cruz
Gary S. Lutzker
New York City Department of
Information Technology and
Telecommunications
11 Metrotech Center
Third Floor
Brooklyn, NY 11201

Robert Alan Garrett
Jonathan M. Frenkel
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004
Attorneys for Office of the
Commissioner of Baseball

Thomas J. Ostertag
Office of the Commissioner
of Baseball
350 Park Avenue
17th Floor
New York, NY 10022

Ralph Faravelli, Mayor
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

Lawrence Fenster
MCI
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Samuel A. Simon, Esq.
Access 2000
901 15th Street, NW
Suite 230
Washington, DC 20005

Harvey Kahn
Access 2000
2656 29th Street
Santa Monica, CA 90405

Gigi B. Sohn
Andrew Jay Schwartzman
Media Access Project
2000 M Street, N.W.
Washington, D.C. 20036

Jeffrey Hops
Director of Government Relations
Alliance for Community Media
666 11th Street, N.W., Suite 806
Washington, D.C. 20001-4542

John Podesta
Institute for Public
Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

James N. Horwood, Esq.
Spiegel & McDiarmid
1350 New York Ave., N.W.
Washington, D.C. 20005

Mary Gardiner Jones
Henry Geller
Alliance for Public Technology
901 15th Street, N.W.
Suite 230
Washington, D.C. 20005

John D. Seiver
T. Scott Thompson
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
Attorneys for American Cable
Entertainment; Bresnan
Communications Co. Ltd.;
Greater Media, Inc.; Cable
Telecommunications Association
of Georgia; Cable Telephone
Association of Maryland,
Delaware and the District of
Columbia; New Jersey Cable
Telecommunications
Association; Ohio Cable
Telecommunications
Association; South Carolina
Cable Television Association;
Tennessee Cable Television
Association; Texas Cable &
Telecommunications
Association; Wisconsin Cable
Communications Association

Marilyn Mohrman-Gillis
Lonna M. Thompson
Association of America's Public
Television Stations
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

James J. Popham
Association of Local Television
Stations, Inc.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

Stephen R. Effros
James H. Ewalt
Cable Telecommunications
Association
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005

Peter Arth, Jr.
Edward W. O'Neill
Mary Mack Adu
505 Van Ness Avenue
San Francisco, CA 94102
Attorneys for the People of the
State of California and the
Public Utilities Commission of
the State of California

Sam Antar
Roger C. Goodspeed
Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023

Peter Tannenwald
Elizabeth A. Sims
Irwin, Campbell & Tannenwald,
P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-1811
Counsel for the Community
Broadcasters Association

Alonzo Matthews
General Services Administration
City and County of Denver
1330 Fox Street
2nd Floor
Denver, CO 80204

Deborah L. Ortega
Hiawatha Davis, Jr.
Room 451
City and County of Denver
City and County Building
Denver, CO 80202

Quincy Rodgers
General Instrument Corporation
GI Communications
Two Lafayette Centre
1133 21st Street N.W.
Suite 405
Washington, D.C. 20036

Emily C. Hewitt
Vincent L. Crivella
Michael J. Ettner
Jody B. Burton
General Services Administration
18th & F Streets, N.W.
Room 4002
Washington, D.C. 20405

Snavely King Majoros O'Connor &
Lee, Inc.
Economic Consultant for GSA
1220 L Street, N.W.
Washington, D.C. 20005

Mark Melnick, Esq.
Group W Satellite Communications
250 Harbor Drive
Stamford, CT 06904-2210

Michael H. Hammer
Francis M. Buono
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036
Attorneys for Home Box Office

James E. Meyers
1555 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036
Attorney for City of Olathe,
Kansas

Robert B. Jacobi
Stanley S. Neustadt
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
Attorneys for Golden Orange
Broadcasting Co, Inc.

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of
Regulatory Utility
Commissioners
1201 Constitution Avenue
Suite 1102
Post Office Box 684
Washington, D.C. 20044

Thomas D. Creighton, #1980X
Robert J. V. Vose, #251872
Bernick and Lifson, P.A.
Suite 1200 The Colonnade
5500 Wayzata Boulevard
Minneapolis, Minnesota 55416
Attorneys for Political
Subdivisions of the State of
Minnesota

Lawrence R. Sidman
Kathy D. Smith
Verner, Liipfert, Bernhard,
McPherson 7 Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
Counsel for National
Broadcasting Company, Inc.

Maureen O. Helmer
John L. Grow
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223

Donna N. Lampert
James J. Valentino
Charon J. Harris
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for Cablevision
Systems Corporation and The
California Cable Television
Association

Alan J. Gardner
Jerry Yanowitz
Jeffrey Sinsheimer
California Cable Television
Association
4341 Piedmont Avenue
Oakland, CA 94611

Robert Lemle
Charles Forma
Marti Green
Cablevision Systems Corporation
One Media Crossways
Woodbury, NY 11797

John A. Levin
Veronica A. Smith
John F. Povilaitis
Pennsylvania Public Utility
Commission
G-31 North Office Building
Commonwealth and North Streets
P.O. Box 3265
Harrisburg, PA 17105-3265

Matthew Lampe
City of Seattle
Department of Administrative
Services
12th Floor, Alaska Building
618 Second Avenue
Seattle, WA 98104-2214

Jot D. Carpenter, Jr.
Telecommunications Industry
Association
1201 Pennsylvania Avenue N.W.
#315
Washington, D.C. 20044-0407

Janis D. Everhart
Scott Carlson
City of Dallas
1500 Marilla, Room 7/D/N
Dallas, TX 75201

Andrew D. Lipman
Jean L. Kiddoo
Karen M. Eisenhauer
Swidler & Berlin, Chartered
3000 K Street N.W., Suite 300
Washington, D.C. 20007
Counsel for MFS Communications
Company, Inc.

Charles S. Walsh
Seth A. Davidson
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
Attorneys for Motion Picture
Association of America, Inc.

Fritz E. Attaway
Motion Picture Association of
America, Inc.
1600 Eye Street, N.W.
Washington, D.C. 20006

Henry L. Baumann
Jack N. Goodman
Terry L. Etter
National Association of
Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Philip R. Hochberg
Verner, Liipfert, Bernhard,
McPherson & Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
Attorney for National Basketball
Association, National Hockey
League, National Football
League

Nicholas P. Miller
Tillman L. Lay
Frederick E. Ellrod III
Miller, Canfield, Paddock and
Stone
1225 19th Street, N.W.
Suite 400
Washington, D.C. 20036
Attorneys for The National
League of Cities; The United
States Conference of Mayors;
The National Association of
Counties; The National
Association of
Telecommunications Officers
and Advisors; Montgomery
County, Maryland; The City of
Los Angeles, California; The
City of Chillicothe, Ohio; The
City of Dearborn, Michigan;
The City of Dubuque, Iowa; The
City of St. Louis, Missouri;
The city of Santa Clara,
California; and The City of
Tallahassee, Florida

David Cosson
L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Blossom A. Peretz, Esq.
Ratepayer Advocate
State of New Jersey
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Howard J. Symons
James J. Valentino
Fernando R. Laguarda
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for Rainbow
Programming Holdings, Inc.

Andrew D. Lipman
Jean L. Kiddoo
Karen M. Eisenhauer
Swidler & Berlin, Chartered
3000 K Street N.W., Suite 300
Washington, D.C. 20007
Counsel for Residential
Communications Network, Inc.

John W. Pettit
Richard J. Arsenault
Drinker Biddle & Reath
901 Fifteenth Street, N.W.
Suite 900
Washington, D.C. 20005
Attorneys for Tandy Corporation

Howard J. Symons
Fernando R. Laguarda
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for Tele-
Communications, Inc.

Michael Hammer
Michael G. Jones
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
Attorneys for Time Warner Cable

Jeffrey L. Sheldon
Sean A. Stokes
UTC
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Sondra J. Tomlinson
Dan L. Poole
US West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Mary McDermott
Linda Kent
Charles D. Cosson
U.S. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Lawrence W. Secrest, III
Peter D. Ross
Rosemary C. Harold
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Viacom Inc.